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DEPARTMENT OF THE ATTORNEY GENERAL

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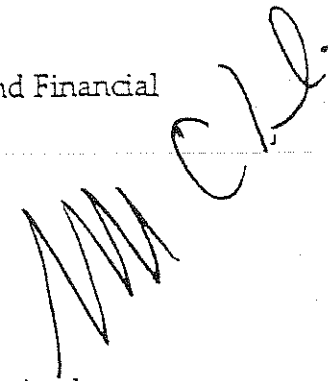
Department of Professional  
& Financial Regulation

TO: Robert E. Murray, Commissioner, Dept. of Professional and Financial  
Regulation

FROM: Robert C. Perkins, Assistant Attorney General

DATE: May 15, 2003

SUBJECT: Professional Licensing Boards' Consideration of Prior Dismissals



At your last meeting with the affiliated boards, we discussed a board's ability to reference and consider prior dismissed complaints when considering what action to take on a subsequent complaint. I apologize for the delay in getting back to you with something in writing. The prior discussion seem to originate from the desire of some boards to consider the fact that similar allegations had been made in an earlier dismissed complaint when deciding what action to take on a later complaint involving the same type of conduct. We then discussed some circumstances in which dismissed complaints could theoretically be relevant to future complaints. I have discussed this further with the various AAG's representing the boards. There is a clear consensus on several points.

First, it is inappropriate for a board to take more adverse action against a licensee on a complaint because the board is aware that similar allegations have been made against the licensee in the past and were dismissed. A dismissal means that the allegation has not been proven. To allow that dismissal to be used against the licensee in the future turns the process on its head. If there was sufficient credible evidence of the allegation in the earlier case, the matter should have been heard rather than dismissed. If there was not sufficient evidence to justify holding a hearing on the charge, it is simply inappropriate to use the existence of that complaint against the licensee in the later case.

There may be ways in which elements of that original complaint are relevant at a later hearing. However, this would involve a situation in which a particular piece of

evidence involved in the first complaint is somehow relevant to the second complaint and, therefore, admitted. That would be handled on a case-by-case basis by the AAG when deciding how to present that later case to the board.

We also discussed the very limited circumstances in which a board might decide that certain kinds of alleged violations, even if admitted, should be dismissed if it was a first offense. For example, some boards have continuing education requirements that technically constitute disciplinary violations if they are not met. A board might decide to dismiss that type of violation the first time around as "not rising to the level of misconduct meriting disciplinary action" and issue a letter of guidance indicating that the conduct should not be repeated and would be a disciplinary violation if it is repeated. In that circumstance, the dismissal and the status of the matter would have been documented in a formal manner through the letter of guidance.

In such cases the board would need to know about the earlier dismissal in order to know to treat it as a second occurrence. However, the earlier dismissal is not being disclosed for the purpose of proving the second offense. It is simply being disclosed to establish the stage in the process in handling these types of complaints the licensee has reached. This is one circumstance in which a board would have to know of the prior dismissal in order to appropriately handle a later complaint.

I cannot emphasize enough the degree to which all the AAG's think that allowing a board to consider a prior dismissal of a case as having some impact on the veracity of a later complaint would be inappropriate and highly prejudicial. At all stages of the process, we need to protect the board members' impartiality and ability to judge each complaint based solely on the evidence presented in that complaint. We cannot do anything that would encourage or facilitate their use of a prior dismissal to prove a subsequent allegation.

In the event that board staff consider that the dismissal of an earlier complaint is relevant to the board's consideration of a later complaint, that information should only be provided to the board after the staff has consulted with the AAG about the presentation of that information to the board in connection with that particular complaint.